DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

SMALL BUSINESS/SELF-EMPLOYED DIVISION

September 5, 2008

Control Number: SBSE-04-0908-039
Expiration Date: 09-05-2009
Impacted IRM: 4:32.4

MEMORANDUM FOR ALL SB/SE EXAMINATION PERSONNEL

FROM: Monica L. Baker /s/ Monica L. Baker
Director, Examination

SUBJECT: Interim Guidance on Applying §6707A Penalty

The attachments to this memo provide interim guidance on processing procedures and technical issues related to the development and assessment of the IRC §6707A penalty. This guidance will be incorporated into IRM 4.32.4 by September 5, 2009.

This interim guidance updates information that was previously issued on July 31, 2006, by the Commissioners of SBSE, LMSB and TE/GE, and the Chief of Appeals. This interim guidance includes updated *Processing Procedures* that now address (i) the Form 2848, *Power of Attorney and Declaration of Representative*, (ii) the period of limitations on assessment, (iii) the use of the modified Form 872, Consent to Extend the Time to Assess Tax, and (iv) how to seek Counsel assistance. This interim guidance also includes updated *Technical Guidance* that addresses the period of limitations on assessment and the disclosure requirements of Treas. Reg. §1.6011-4, especially the significance of when the taxpayer entered into the reportable transaction.

Section 6707A provides a monetary penalty for the failure to include on any return, including an amended return, or statement, any information required to be disclosed under IRC §6011 and associated regulations regarding “reportable transactions” as described in §1.6011-4. The penalty is in addition to any other penalty that may be imposed, and applies without regard to whether the transaction ultimately results in an understatement. For failure to disclose a non-listed reportable transaction, the §6707A penalty is $10,000 if the taxpayer is an individual, and $50,000 for all other taxpayers. If the violation involves a listed transaction, the penalty is $100,000 for individuals and $200,000 for all other taxpayers.

The §6707A penalty differs from other penalties because there is no reasonable cause exception. The Commissioner may, however, rescind the penalty with respect to reportable non-listed transactions if it would promote compliance with the tax laws and

effective tax administration. In this regard, the IRS is required to submit an annual report to Congress summarizing the application of the disclosure penalties and the rescission provision.

We developed new procedures for imposing the §6707A penalty because of its unique features. Among the special procedures, the Area Director must determine whether to approve the §6707A penalty. Because the statute provides no reasonable cause or other good faith exception to the penalty, the agent must fully develop the relevant facts and must process the penalty approval through the Group Manager and Territory Manager to the Area Director whenever a §6707A penalty investigation indicates that the penalty legally applies.

In addition to the *Processing Procedures* and *Technical Guidance*, the following materials are posted on the IRC §6707A penalty link on the SBSE Examination Abusive Transactions website:

- Opening Letter for a §6707A penalty investigation
- Form 872 for 6707A Penalty Only
- Form 872 for Income Tax and 6707A Penalty
- Frequently Asked Questions
- *Pro Forma* Form 886-A
- §6707A Penalty Case Overview and Penalty Approval Form
- §6707A Attachment to Case Overview
- §6707A Sample of Completed Case Overview
- §6707A 30-day letter
- Rescission Checklist (applicable to 6707 and 6707A)
- Rescission Revenue Procedure 2007-21
- Contacts for additional assistance

Note that if a taxpayer has participated in a reportable transaction for purposes of §6707A, he or she has likewise participated in a reportable transaction for purposes of an accuracy-related penalty under §6662A. For this reason, where a §6707A penalty is considered, a §6662A penalty should be considered. However, the imposition of the §6662A penalty does **not** necessarily follow the imposition of the §6707A because, unlike the §6707A penalty, the §6662A penalty does not apply with respect to any portion of a reportable transaction understatement if, pursuant to IRC §6664(d), it is shown that there was reasonable cause and the taxpayer acted in good faith with respect to that portion of the understatement. On the other hand, the fact that a taxpayer is not subject to the §6707A penalty because he or she properly disclosed participation in a reportable transaction does **not** relieve the taxpayer of the §6662A Penalty, which can apply (at the 20% rate) even where a reportable transaction is properly disclosed.

Please direct suggestions, questions, comments, and concerns about §6707A to Alice Ronk, Attorney-Advisor to the Director, Abusive Transactions.

Effect on Other Documents: The procedures and technical guidance will be incorporated into IRM Section IRM 4.32.4 by September 5, 2009.

Attachments (2)

cc: Commissioner, Large and Mid-size Business
Commissioner, Tax Exempt and Government Entities
Chief, Appeals
www.irs.gov

ATTACHMENT 1

PROCESSING PROCEDURES FOR IRC § 6707A PENALTY

I. INTRODUCTION

This attachment provides a brief explanation about why the procedures for imposing the §6707A penalty differ from other procedures and details the procedures for imposing the §6707A penalty. We may revise the processes in response to our experiences in identifying and imposing this penalty. These procedures are being currently incorporated into the Internal Revenue Manual Section 4.32.4.1.4.

Technical information about the §6707A penalty, including how to identify reportable transactions, the grounds for imposing the penalty, and the period of limitations, is contained in the associated *Technical Guidance* attachment. For additional information please refer to the IRC § 6707A penalty link on the Abusive Transactions website at abusiveshelter.web.irs.gov.

II. WHY §6707A PENALTY PROCEDURES DIFFER FROM OTHER PROCEDURES

Unlike most other penalties, §6707A allows the Commissioner to rescind the imposition of the penalty with respect to reportable non-listed transactions if it would "promote compliance with the tax laws and effective tax administration." The penalty cannot be rescinded with respect to a listed transaction. The IRS is required to submit an annual report to Congress summarizing the application of the disclosure penalties and the rescission provision. In addition, the determination of whether the §6707A penalty applies can impact the determination of the new §6662A penalty ("Reportable Transaction Understatement") which was added by §812 of the AJCA. (Technical and Procedural Guidance for the Section 6662A penalty has been incorporated into IRM Section 20.1.5 published July 1, 2008. It has also been excerpted into a memorandum being issued along with this Section 6707A guidance.) For these reasons, we have developed procedures to expedite the imposition and potential rescission of the §6707A penalty, and to facilitate centralized tracking of rescission requests. As detailed below, these procedures include: (1) developing the §6707A penalty case file at the beginning of the case as a separate file, (2) assessing the penalty independently from any underlying tax liability or other penalties and using expedited assessment procedures, and (3) after assessment, sending all files to LMSB Performance, Quality and Audit Assistance pending resolution of any rescission requests, expiration of the time to seek rescission, or determination that rescission is not available because the transaction is a listed transaction.

III. PROCEDURES FOR PROCESSING A §6707A PENALTY

A. Administrative Issues

1. Penalty cases involving a potential §6707A penalty should be established as penalty investigations on ERCS and include the project and tracking codes. If you are uncertain about the proper project or tracking codes, please consult the issue management team.

2. Complete Form 5345-D to put the investigation on ERCS, check the box "Control Penalty Investigation" and use penalty MFT P5; examiners' time will be charged to Activity Code 505 on their 4502 reports.

3. If SB/SE is involved in concurrent examination with TEGE, then the penalty case file will be assigned to the SB/SE examiner. For example, a TEGE examiner would analyze and write-up whether a transaction is substantially similar to a listed transaction and the SBSE agent would analyze whether the taxpayer had a duty to disclose under Treas. Reg. §1.6011-4, whether he or she did, in fact, comply with any applicable disclosure requirement and whether §6707A is effective for the year(s) at issue.

4. A taxpayer's liability for the §6707A penalty may be determined through examination of the taxpayer's return. In addition, however, the §6707A penalty can be asserted even if no income tax examination is opened, if the basis for the penalty is established through other available information, such as the investigation of a promoter or preparer.

5. The assessment of the §6707A penalty does not constitute an examination for IRC §7605(b) purposes, prevent the subsequent opening of an examination, or close any on-going examination of other penalties and tax liability.

B. Opening an Investigation

1. *Opening* letter*:* An opening letter is posted at the IRC § 6707A penalty link on the SBSE Examination Abusive Transactions website.

2. *Power of Attorney:* If a representative is to be included in correspondence or discussions of the 6707A penalty, a revised Form 2848, *Power of Attorney and Declaration of Representative*, will be needed that states "Income Taxes and Civil Penalties." In addition, please ensure that (1) the applicable years is complete, i.e., "Dec. 31,

2004" or "12/31/2004," and not merely "2004" or "04," and (2) that there is evidence that the form has been sent to the Campus.

C. Statute of Limitations – IRC § 6707A Penalty

1. In general, the 30-day letter should be issued with at least 6 months remaining on the period of limitations on assessment. This will allow sufficient time for the taxpayer to seek Appeals consideration of the penalty and thereafter to allow assessment of the penalty, if appropriate.

2. When Disclosure is Required*:* Under the current version of the IRC § 6011 regulations, disclosure (on Form 8886, *Reportable Transaction Disclosure Statement*) of a reportable transaction is not always to be made with the taxpayer's return.

3. Disclosure Required With Return

   a. General period of limitations When the Form 8886 is required to be filed with a return, the assessment of the IRC § 6707A penalty for a failure to timely and/or properly disclose a reportable transaction generally must be made within three years of the date of filing the underlying return pursuant to IRC § 6501, *Limitations on Assessment and Collection*.

   b. Exception for listed transactions If the transaction giving rise to the disclosure requirement is a listed transaction, then additional time to assess may be available under IRC § 6501(c)(10). After first following the instructions in *General Procedure Applicable to All Reportable Transactions* in the following section, see Rev. Proc. 2005-26, 2005-17 I.R.B. 965 for further guidance on IRC § 6501(c)(10).

   c. General Procedures Applicable to all Reportable Transactions

      1. The best practice would be to make a determination regarding the application of the IRC § 6707A penalty within in the three-year period so that there are no issues with the period in which to assess the penalty.

      2. Where it is not possible to complete an appropriate investigation within the three-year period, an agent should seek to obtain the taxpayer's consent to extend the period of limitations.

3. Form 872

   - The Form 872 for the underlying tax does not extend the period of limitations for assessment of the penalty unless the form includes specific language addressing the penalty. The following language is approved for use: "Without otherwise limiting the applicability of this agreement, this agreement also extends to the expiration date identified in paragraph (1) above the period of limitations for assessing any penalty pursuant to IRC § 6707A, Penalty For Failure to Include Reportable Transaction Information with the Return, with respect to the taxpayers, kind of tax, and tax periods identified above."

   - Agents were previously directed to use Form 872-I as modified with the above language. Use of the Form 872-I is no longer required, but is still acceptable. Regardless which form is used, it must be modified to include the language above**.** If one wants to extend the 6707A penalty alone, agents may use the modified Form 872 that appears under the "AJCA" link on the AT website.

   - To extend the period of limitations for a partnership potentially subject to a section 6707A penalty, the Form 872 should be signed by the General Partner and not the Tax Matters Partner. There is no line on the Form 872 for a General Partner to sign. The agent should strike through the words "Corporate Name" and write in "Partnership Name" and strike through "Corporate Officer" and substitute "General Partner."

4. If the taxpayer extends the statute, ERCS should be updated to reflect the new statute date.

5. If a taxpayer refuses to consent to extend the period of limitations on assessment and the case is sufficiently developed to assess the penalty, assess the penalty.

   Note: If the penalty is developed along with the determination of a deficiency with respect to the reportable transaction and a statutory notice of deficiency is issued, the penalty still needs to be assessed within the three-year period (unless an exception applies). The time to assess a deficiency is suspended during the 90-day period to file a petition, the time the case is before the Tax Court and an additional 60 days after the court's

decision is final, however, these rules do not apply to the time to assess the penalty because the penalty is not part of the deficiency or subject to the deficiency procedures.

6. Taxpayers are generally afforded only pre-assessment Appeals consideration of the 6707A penalty. Occasionally, the penalty may be assessed before a taxpayer is afforded Appeals consideration (for example, there are circumstances where the expiration of the period of limitations is imminent and a consent to extend that period has not been secured). Under these circumstances, proceed to assessment, document the file, inform the taxpayer of the right to go to Appeals. If a proper request for Appeals consideration is received, forward the case to Appeals.

7. If the taxpayer refuses to consent to extend the period of limitations on assessment, the transaction at issue is a listed transaction, and the case is not sufficiently developed to assess the penalty, the agent should consult with Counsel to determine whether the period in which to assess (the tax and the penalty) is extended by IRC § 6501(c)(10). The agent may also consult with Counsel, as necessary, to determine whether any other exceptions to the normal period of limitations apply.

   Note: If the transaction at issue is not a listed transaction or IRC §6501(c)(10) does not otherwise apply, the agent should determine whether any other exception to the period of limitations applies.

d. Listed Transactions. For listed transactions only, IRC § 6501(c)(10) provides additional time to make an assessment of the penalty if the disclosure is not made with the return. IRC § 6501(c)(10) provides that the period to assess tax with respect to a listed transaction that the taxpayer fails to disclose in accordance with IRC § 6011 shall not expire before one year after the earlier of (i) the date the taxpayer provides the information required under IRC § 6011, or (ii) the date that a material advisor meets the requirements of IRC § 6112. Consult with Counsel to determine the applicability of this provision.

4. *Disclosure* Required *Without Return*

a. Treas. Reg. §1.6011-4(e)(2)(i) requires taxpayers to file a disclosure with OTSA within 90 days of the date that a previously unlisted transaction, is listed by the Service if the taxpayer participated in the transaction and reported tax benefits from it on a return. Thus, in this situation, regulations require the disclosure to be filed without

a return. Because the return on which the taxpayer took the tax benefits of the transaction was already filed and at the time of filing the return there was no requirement to make the disclosure (unless the transaction could have been considered a reportable transaction), there does not seem to be any basis to associate the three-year period for assessing tax on a return with the time to assess the penalty for failing to file a stand-alone statement. Nonetheless, if the period of limitations on assessing the tax on this return is still open at the time of the failure to disclose, IRC § 6501(c)(10) may provide additional time to assess any tax imposed related to the listed transaction. Thus, the time to assess the penalty for failure to disclose the listed transaction would not end before the time the Service has to assess the tax.

b. In this situation the best practice is for the agent to seek to obtain the taxpayer's consent to extend the period of limitations if the expiration of the normal three-year period is imminent. The agent should follow the instructions in III.C.3.c.1 through 7 above. If the taxpayer refuses to consent to extend the statute of limitations, the agent should coordinate with Counsel to determine the proper period of limitations for assessing the penalty in this scenario.

D. Seeking Counsel Assistance

Because the Service's use of the §6707A penalty is still in its early stages and to address the recurring need to provide quick and consistent legal advice regarding application of the penalty, Counsel has formulated the following procedures to provide access to the subject matter experts as soon as legal advice is requested.

When seeking legal advice regarding the application of 6707A:

- The Revenue Agent or Technical Advisor should consult with his or her IMT Counsel.
- The IMT Counsel will consult with the subject-matter experts in Counsel. The IMT counsel can either informally contact the National Office experts by phone or email, or can formally request assistance using the TSS4510 process.

E. Development of the Penalty Case File

Because the statute provides no reasonable cause or other good faith exception to the penalty, the Agent must fully develop the relevant facts and must process the penalty as described in this section, whenever a § 6707A penalty investigation indicates that the penalty legally applies.

An examiner can check with the Office of Tax Shelter Analysis (OTSA) to determine whether OTSA has a disclosure on file. Contacts at OTSA are listed at the following website at "lmsb.irs.gov/hq/pftg/otsa/Disclosure.asp." An examiner should be prepared to provide to OTSA the taxpayer name, TIN, year or years of interest and, if available, type of transaction.

The agent should also order the original tax return to determine whether a disclosure was filed with the return.

Once an examiner determines that a taxpayer either has failed to properly disclose a reportable transaction (whether listed or non-listed) on Form 8886, *Reportable Transaction Disclosure Statement*, or has not timely filed the Form 8886 (or the required duplicate), the examiner prepares a separate case file, as follows:

1. Develop a case file that contains all relevant documents or other evidence that demonstrates that the transaction was a reportable transaction, *e.g.* transactional documents, email, other correspondence, opinions about whether the transaction is a reportable transaction or promotional material. In addition, where applicable, include any evidence about why a disclosure is deficient, including the Form 8886 and any other evidence about the time or manner of filing the Form 8886.

2. Include the following information:

    a. description of the transaction(s) for which disclosure is required explanation of the category of reportable transaction (*e.g.*, listed transaction, confidential transaction, transaction with contractual protection, loss transaction, transaction with significant book-tax difference, transaction involving an asset with a brief holding period, or transaction of interest).
    b. statement of facts and explanation of the examiner's rationale for concluding that the taxpayer participated in a reportable transaction statement of whether the taxpayer filed a Form 8886
    c. if a Form 8886 was filed, statement of facts and explanation of examiner's rationale for concluding that the form was deficient.

3. In addition, the case file should contain a completed Form 8278, *Computation and Assessment of Miscellaneous Penalties*. ***Please ensure that you are using the most current Form 8278 which can be found at http://publish.no.irs.gov/catlg.html.***

4. The appropriate reference number to use on Form 8278 for the IRC §6707A penalty is 648.

5. There is no difference between a TEFRA partnership and a non-TEFRA partnership for purposes of imposing the penalty for failure to report reportable transaction information against the partnership as a state law entity. This penalty should not be subject to the TEFRA procedures. Specifically, the TEFRA procedures apply only to partnership items (items under subtitle A of the Code), and penalties that "relate to an adjustment" of such partnership items. I.R.C. 6221. In the case where we are penalizing the partnership under IRC §6707A, the TEFRA procedures do not apply.

F. Penalty Approval

1. The examiner submits the file to his or her immediate supervisor for written approval of the imposition of the penalty. For your convenience, a "*Case Overview and Record of Approval of §6707A Penalty*" form that may be used for this purpose will be posted at the IRC §6707A penalty link on SBSE Examination Abusive Transactions website.
2. If approved, the immediate supervisor records and dates his or her approval in the file and forwards the file to the Territory Manager. If the penalty is not approved, the immediate supervisor will return the case to the examiner for further development or other action.
3. If the Territory Manager approves the penalty, he or she records and dates the approval in the file and forwards the case to the appropriate executive for review and approval of the penalty. If the penalty is not approved, the Territory Manager will return the case to the examiner for further development or other action.
4. Upon approval by the Territory Manager, the Area Director will review the proposed imposition of the penalty for SBSE.
5. All reviewing officials should approve or decline approval of the penalty as promptly as possible.
6. Once the imposition of the penalty is completely approved (*i.e.*, approved by the relevant executive), the file, including the record of approval, will be returned to the examiner.
7. The §6707A penalty has **no** reasonable cause exception and the penalty must be developed wherever it appears legally applicable.

G. Issuing the §6707A 30-Day Letter (L-4143)

1. The report to assert the §6707A penalty cannot be prepared on RGS.

2. After the Area Director approves assertion of the §6707A penalty, the SB/SE agent prepares and sends to the taxpayer the 30-day letter L-4143 and encloses Form 4549A, Form 886A, Publication 1, Publication 5, and Publication 594. An example of the 30-day letter is posted at

the IRC §6707A penalty link on SBSE Examination Abusive Transactions website.

3. The 30-day letter L-4143 used for §6707A penalty application informs taxpayers of Appeal rights, and specifies that the taxpayer must request review by Appeals within 30 days of the date of the notice.

4. This 30-day letter has been modified to explain that the proposed penalty assessment does not constitute an examination for IRC §7605(b) purposes, prevent the subsequent opening of an examination, or close any on-going examination of other penalties and tax liability for the tax period listed above.

5. In addition, this 30-day letter has been modified to explain that certain information contained in Publication 1 and Publication 5 is not applicable to the IRC §6707A penalty.

6. Where the taxpayer agrees with the proposed assessment, the examiner requests taxpayer's signature on a Form 870.

H. No-Change Letter

If, after opening a §6707A investigation and contacting the taxpayer, it is determined that no §6707A penalty applies, the examiner will issue a no-change letter specifically addressing this penalty. A §6707A no-change letter is posted at the IRC § 6707A penalty link on the Abusive Transactions website at abuseshelter.web.irs.gov.

I. Timely Appeals Request

1. NOTE: While the case is in Appeals, it should remain in Status Code 12 in ERCS. Jurisdiction for the penalty remains with the Revenue Agent. The case does not go though Technical Services. Do not update the case to Status Code 13, because use of that code would erroneously indicate that the 30-day letter is still outstanding.

2. To obtain Appeals consideration, the taxpayer must submit a timely written request (regardless of the total amount of the proposed assessment) and follow the standard protest procedures.

3. If the taxpayer's protest is incomplete, the group manager should return it to the taxpayer and grant additional time to perfect the document.

4. If the protest contains information warranting further consideration, the group manager should return the case to the examiner for further development. Cases returned for additional development should be considered priority work and given expedited consideration.

5. The group manager should attempt to discuss the disputed issues with the taxpayer (or his or her representative) in an attempt to resolve the issues, obtain agreement, and limit taxpayer burden. If agreement cannot be reached, the case will be forwarded to Appeals as outlined in the steps below.

6. Upon receipt of a Protest, the *examiner*:

   a. will consider the information contained therein and, if appropriate, reconsider the assertion of the penalty.

   b. may make written comments in response to the Protest (*see* generally, IRM 4.23.10.17.4). If the examiner prepares a rebuttal to the taxpayer's protest, the examiner must send a copy of the rebuttal to the taxpayer.

   c. will determine whether he or she wishes to participate in the Appeals resolution conference.

   d. will contact the taxpayer and identify at least 2 dates for a resolution

   e. conference acceptable to the taxpayer, falling 10 to 20 days, in general, after the case file is received in the Appeals Office.

   f. if the examiner desires to participate in the resolution conference, will assure that all participants from the originating function can also attend the resolution conference on the identified dates.

   g. will contact the Appeals AAP-§6707A Case Coordinator assigned to her/his geographical location (see list on web at http://abuseshelter.web.irs.gov/Penalties/AJCA6707A.htm). The Appeals AAP-§6707A Case Coordinator will advise the originating function, generally within 2 business days, as to which Appeals Office the case will be sent and the name of the appeals officer to be assigned.

   h. will prepare Form 4665, *Report Transmittal* ("T-Letter"), briefly communicating information that may not be readily accessible in the case file. The Form 4665 will also contain:

      - The name of the Appeals AAP-§6707A Case Coordinator.
      - The name of the appeals officer to be assigned the case.
      - A statement in bold letters: "**This case involves an Appeals Coordinated Issue – the penalty under IRC §6707A. The appeals officer assigned this case is required to contact the**

Technical Guidance Coordinator ("TGC") assigned to the §6707A penalty issue. An ACI requires review and concurrence of the TGC."

- The dates that the taxpayer is available for a resolution conference.
- A statement as to whether the originating function desires to be involved in the resolution conference.
- The statute of limitations on assessment date.

i. will forward by overnight mail, generally within 10 days from the receipt of a Protest, the complete IRC §6707A penalty file (including the examiner's rebuttal, if any) to the Appeals Office as designated by the Appeals AAP-§6707A Case Coordinator.

j. Form 3210, *Document Transmittal,* is used to track the transfer of the case to the Appeals Office as the IRC §6707A penalty is not controlled on the Automated Information Management System (AIMS).

7. Appeals determines whether to sustain in full or in part the IRC §6707A penalty after considering the litigation hazards of whether the transaction is a listed or otherwise reportable transaction and whether the transaction was properly disclosed.

8. Appeals recommends appropriate resolution based on the hazards and merits of the issues.

9. Upon completion of Appeals consideration, the Appeals Officer will return the case file; including the Appeals case memorandum, closing letter, and agreement form, if any, directly to the originating Exam group.

10. **Please note*:*** Please seek additional guidance by contacting the SBSE contact posted at the IRC §6707A penalty link on SBSE Examination Abusive Transactions website.

J. Assessment

1. Before assessing any §6707A penalty, an AT RO should be contacted as specified in IRM 4.32.4.1.4.17(3).
2. The examiner requests quick assessment from the Centralized Case Processing (CCP) unit. Quick assessments will be worked by the assigned CCP Field Office Resource Team (FORT) within five business days of receipt in the FORT. The examiner will get the DLN back in 2 weeks and the assessment will post to master file in approximately 4 weeks.
3. SPECIAL INSTRUCTIONS FOR **FISCAL YEAR** ASSESSMENTS: If you are assessing a fiscal year penalty, include this instruction on the

Form 3198: **"Please use ADJ54 NOT Form 2859 to process this penalty."** Fiscal year assessments take longer to process, so the examiner should monitor IDRS for the DLN after 3 weeks and posting of the assessment after 4-5 weeks.

4. To request quick assessments, the examiner should alert the following FORT manager and fax to her the required documents (listed in #4, below):

   Linda Spivey, acting FORT Manager (Memphis, TN)
   phone: 901-786-7020
   fax: 901-786-7106 or 901-786-7105

5. The examiner faxes the Form 8278 and Form 3198 to the FORT Manager.
6. Upon completion of the quick assessment, the CCP will:
   a. Notate Form 8278 “Request Completed”
   b. fax a copy back to examiner for association with the original case file to show that the assessment was completed
7. Upon assessment, a notice and demand letter is automatically generated. Specifically, for an IMF penalty, the MFT is 55 and the system automatically generates a CP15. For a BMF penalty, the MFT is 13 and the system automatically generates a CP 215.
   a. If the penalty relates to a non-listed reportable transaction, the examiner also completes the rescission checksheet and forwards the copy of the penalty file to LMSB PQA for potential rescission request:

      Internal Revenue Service
      LM:PQA:JC:(1953)RR
      Large & Mid-Size Business Division
      110 West. 44th Street, 3rd Floor
      New York, NY 10036

   b. If the penalty relates to a listed transaction:

      - The examiner also sends Form 8278 and attachments to LMSB Office of Tax Shelter Analysis (OTSA) Contacts at OTSA website (“lmsb.irs.gov/hq/pftg/otsa/who we are/contacts”).
      - OTSA will review to ensure compliance with §6707A(e) (*i.e.,* disclosures to the Securities and Exchange Commission (SEC) where a taxpayer has an SEC reporting requirement and has participated in a listed transaction).

K. Rescission Request

1. Listed reportable transactions are not eligible for rescission consideration.
2. Currently, a taxpayer may seek rescission only if (1) the Service did not offer an opportunity to go to Appeals prior to assessment of the

penalty, (2) Appeals has concluded its consideration of the issue or (2) the taxpayer has, in writing, both waived its right to such consideration and conceded his liability for the penalty.

3. The Deputy Commissioner for Services and Enforcement will be delegated the responsibility to determine for the Commissioner whether to rescind the penalty in part or in full.
4. The taxpayer must seek rescission within 30 days of notice and demand or full payment of the penalty, whichever is earlier.
5. The taxpayer must send the rescission request to PQA for review.
6. PQA will coordinate with Exam and Appeals.
7. PQA will compile the rescission request package and forward a recommendation to the Servicewide Abusive Transaction (SAT) Steering committee for review.
    a. The package prepared by PQA will include letters prepared for the Deputy Commissioner to sign and send to the taxpayer.
    b. The package will also include an executive summary sheet that includes a short summary of the amount of the penalty, the basis for asserting the penalty (i.e., what type of transaction), the basis for the taxpayer's rescission request and recommendation.
8. The SAT will review the recommendation and, if it agrees, will forward it to the office of the Deputy Commissioner for Services and Enforcement to the attention of the Assistant Deputy Commissioner for Services and Enforcement.
9. If the Deputy Commissioner for Services and Enforcement agrees with the recommendation, they will sign the letter to the taxpayer that has been prepared by PQA. The Deputy Commissioner's office will retain a copy of the signed letter and executive summary sheet, and send the original letter to the taxpayer. The Deputy Commissioner's office will return the rescission package to PQA and include a copy of the signed letter. If the Deputy Commissioner's office does not agree with the recommendation or needs more information, it will contact PQA.
10. PQA will notify any function in the IRS that still has the taxpayer's return under consideration (*e.g.*, Exam, Appeals, or Counsel).
11. The rescission determination is not reviewable by Appeals or by any court.
12. ***Please note:*** Rev. Proc. 2007-21, 2007-9 I.R.B. 613, provides detailed information about how a taxpayer will seek rescission and what factors will support a rescission request. If you have a case in which a §6707A assessment is made, please contact the division contacts posted on the IRC § 6707A penalty link on the Abusive Transactions website at abuseshelter.web.irs.gov.

L. Continuation of Exam and §6662A Considerations

In general, the income tax examinations should not be delayed pending consideration of a rescission request. There are, however, situations

where the determination of whether the §6707A penalty applies can impact the determination of whether the new §6662A penalty applies. Section 6662A ("Reportable Transaction Understatement") was added by §812 of the AJCA and imposes a 20 percent penalty on an understatement resulting from a reportable transaction that is properly disclosed and a 30 percent penalty on an understatement resulting from a reportable transaction that is not properly disclosed. The §6662A penalty will not be imposed if the taxpayer adequately disclosed its reportable transaction, and meets other criteria to establish reasonable cause and good faith.

If Appeals rejects the proposed assessment of a §6707A penalty based on its determination that the transaction in question was not a reportable transaction, then the §6662A penalty will not apply. If Appeals rejects the proposed §6707A assessment based on its determination that the transaction was reportable but was properly disclosed, the penalty will be reduced from 30 to 20 percent.

In addition, for purposes of §6662A, a taxpayer is deemed to have properly disclosed the reportable transaction if the Commissioner has rescinded the imposition of the §6707A penalty with respect to the transaction. Therefore, if the Commissioner rescinds the §6707A penalty, the application of the §6662A penalty may not apply depending on whether the taxpayer meets the other criteria for relief under the reasonable cause and good faith provisions of §6664. Therefore, the case should not be closed until the rescission determination is made if (1) the examiner proposes a §6662A penalty with respect to the reportable transaction, (2) the taxpayer meets the substantial authority standard in §6664(d)(2)(B), and (3) the taxpayer meets the reasonable belief standard in §6664(d)(2)(C). Because if the §6707A penalty is rescinded, the taxpayer is deemed to have properly disclosed and, because in this situation the taxpayer met the other criteria to demonstrate reasonable cause and good faith, the §6662A penalty will not apply.

In contrast, where the results of the examination will not be affected by the Commissioner's rescission determination (i.e., there is no proposed §6662A penalty or the taxpayer would be liable for the penalty even if it had adequately disclosed because it failed to meet the other criteria to establish reasonable cause and good faith), the case should proceed and can be closed from the group without waiting for the conclusion of the rescission determination.

M. Penalty Case File Closure

Whether an examiner has pursued a § 6707A penalty in connection with an income tax examination or not, the penalty case file will need to be closed in a particular fashion

1. *If a Penalty Was Assessed*:

   a. Prior to closure, the group secretary should input the penalty assessment amount in ERCS under the **penalty** amount. (Please ensure the penalty amount is not erroneously entered into the **deficiency** amount.)
   b. Obtain a transcript of the taxpayer's account and identify the Document Locator Number (DLN) that is associated with Transaction Code (TC) 240 and Penalty Reference Number (PRN) 648.
   c. Place a Form 3198 on the case file. In the "Special Features" section, check the box for "Other Instructions" and include the following language:
      - "IRC § 6707A Penalty Case File – Associate with Penalty Assessment Under DLN" (and input the DLN identified from the transcript in item 1).
   d. Ensure that the penalty case file includes the items identified in Section B of this procedural memo.
   e. Update case to Disposal Code 12
   f. Update case to Status 90 on ERCS
   g. The Group Secretary will close the case to files. The closed case must be associated with the DLN of the Quick Assessment with the Transaction Code 240 and Penalty Reference Number 648 of 1 above. The mailing of the closed case file must include a Form 3210 that the group retains for three years. The closed case file is sent to:

      Internal Revenue Service
      Cincinnati Service Center
      IAP Processing
      201 W Rivercenter Blvd Stop 2901-F
      Covington, KY 41011

   h. The use of these closed case files procedures should ensure the closed case file can be secured from files using the DLN of the TC 240 PRN 648.

2. *If No Penalty Was Assessed but the Case was Established on ERCS:*

   a. Form 8278 – Penalty Assessment (Page 3) - Complete columns {c} & {d} for the applicable penalty amount of zero. The 3 digit

reference code is 648. The Form should be signed by the Group Manager.

b. Attach Form 3198 to penalty admin file with clear directions for all workpapers to be kept with the closed case admin file and filed with the Form 8278 DLN after zero penalty posting.
c. Ensure that the case is flagged to note that a penalty was considered but not asserted.
d. Update case to Disposal Code 02
e. Update case to Status 51 on ERCS
f. Follow normal closing procedures to Memphis Centralized Case Processing (CCP). CCP establishes a transaction code (noting that no penalty was assessed) and a DLN for the file. The file is stored like an audit file and can be retrieved if needed in the future using the DLN.
g. If taxpayer was contacted, send § 6707A no-change letter.

ATTACHMENT 2

TECHNICAL GUIDANCE ON APPLYING THE IRC §6707A PENALTY

I. INTRODUCTION

This memorandum (1) explains technical issues relating to the §6707A penalty which imposes a monetary penalty for failure to comply with the disclosure requirements of §6011 and the associated regulations; (2) provides information about the requirements of §6011 and the associated regulations; and (3) provides miscellaneous information to assist in developing the §6707A penalty cases.

This information is not a substitute for the guidance provided by Notice 2005-11, 2005-1 C.B. 493, or future guidance that will be issued. If you believe the §6707A penalty may apply to the transaction you are reviewing, you should strongly consider consulting Counsel. Information about the procedures for imposing the §6707A penalty are contained in the associated procedural guidance. For additional information, please refer to on the IRC § 6707A penalty link on the Abusive Transactions website at abusiveshelter.web.irs.gov.

II. SECTION 6707A PENALTY

A. Overview

Section 6707A provides a monetary penalty for the failure to include on any return or statement any information required to be disclosed under §6011 with respect to a reportable transaction. Under Treas. Reg. §1.6011-4, disclosure is required with respect to five (formerly six) types of "reportable transactions." The §6707A penalty is in addition to any other penalty that may be imposed, and applies without regard to whether the transaction ultimately results in an understatement. It is a stand-alone penalty; it does not require an associated income tax examination.

For failure to disclose a non-listed reportable transaction, the §6707A penalty is $10,000 if the taxpayer is an individual, and $50,000 for all other taxpayers. If the violation involves a listed transaction, the penalty is $100,000 for individuals and $200,000 for all other taxpayers.

Section 6707A(e) further provides that taxpayers that are publicly traded companies (*i.e*. those with SEC filing requirements under Sections 13 or 15 of the Securities and Exchange Act of 1934) are required to disclose their liability for §6707A penalties in public reports filed with the Securities and Exchange Commission. See Rev. Proc. 2005-51, 2005-2 C.B. 296 (2005), as well as Rev. Proc. 2007-25, 2007-12 I.R.B. 761, for additional information.

Unlike many other penalties, the §6707A penalty contains no reasonable cause exception. Also unlike most other penalties, §6707A allows the Commissioner to rescind the imposition of the penalty with respect to reportable non-listed transactions if it would "promote compliance with the tax laws and effective tax administration." The penalty cannot be rescinded with respect to a listed transaction. A decision to rescind must be accompanied by a record describing the facts, reasons for the decision, and the amount rescinded. While a taxpayer may challenge, in Appeals and in court, the determination that it engaged in a reportable transaction or that it failed to timely and adequately disclose its participation in such a transaction, it cannot seek such review of the Commissioner's refusal to rescind penalty. See Rev. Proc. 2007-21, 2007-9 I.R.B. 613, for additional information on the rescission process. The IRS is required to submit an annual report to Congress summarizing the application of the §6707A penalty and the rescission provision.

B. When does Section 6707A become effective?

Section 6707A will apply to returns and statements that are due after the date of enactment, October 22, 2004, and that have not previously been filed by the taxpayer. In other words, where a tax return or statement was due after October 22, 2004, and the taxpayer filed early (that is, before October 22, 2004), the taxpayer is not subject to the §6707A penalty with respect to that early-filed return. On February 14, 2005, the Service issued Notice 2005-11. In Notice 2005-11, the Service provided interim guidance stating that the penalty under section 6707A applies to each failure to provide a disclosure statement that is required to be attached to an original or amended return filed after October 22, 2004 (with a copy sent to OTSA, if required), **regardless of whether the original return was due on or before October 22, 2004**. For example, where a taxpayer files his TY 2002 tax return after October 22, 2004 and fails to attach the required disclosure, Section 6707A applies, even though the original return was due before October 22, 2004.

C. Application of Section 6707A—in general

1. Notice 2005-11

Notice 2005-11: (1) alerts taxpayers to the newly enacted §6707A; (2) informs taxpayers that the Treasury and IRS plan to issue new regulations under §6707A; and (3) provides interim guidance on the imposition and rescission of penalties under §6707A. Its provisions are effective until further formal guidance is issued.

Notice 2005-11 states that the Service will impose a penalty under §6707A with respect to each failure to timely and adequately disclose a reportable transaction as required by Section 6011 and the associated regulations. However, a taxpayer that fails to attach a reportable transaction disclosure statement to a return, including an amended return, and also fails to provide a copy of a

required disclosure statement to the Office of Tax Shelter Analysis (OTSA), will only be subject to a single penalty under §6707A.

The following two examples from Notice 2005-11 illustrate the application of the §6707A penalty for failure to comply with the requirement to file a reportable transaction disclosure statement.

Example 1

T was required to attach a Form 8886 to T's original return for the 2005 taxable year, and to send a copy of the Form 8886 to OTSA at the time T filed its original return. T failed to attach the Form 8886 to its return and also failed to send a copy of the Form 8886 to OTSA. As a result, T is subject to a penalty under §6707A for a failure to disclose because T failed to comply with both of the disclosure requirements. Note, too, that the §6707A penalty also would apply if T had failed to comply with either of the two aforementioned requirements.

Example 2

Continuing Example 1: T subsequently filed an amended return for 2005 that reflects T's participation in the reportable transaction. T also failed to attach a Form 8886 to the amended return as required by §1.6011-4(e)(1) and, therefore, T is subject to an additional penalty under §6707A for failing to disclose a reportable transaction.

2. A taxpayer generally cannot cure a failure to file a disclosure by filing a disclosure with an amended return.

Under the current regulations, filing an amended return with a disclosure will not cure the failure to file a disclosure with the original return unless the amended return is filed before the due date of the original return (whether extended or not).

Example:

Taxpayer's extended due date is August 15th. On June 1, he files a return but fails to include the required disclosure. On September 1 (i.e., after the due date of the return), he files an amended return with the disclosure. He is still liable for the penalty. It doesn't matter that he attempted to cure the problem or whether he attempted to do so before or after the IRS discovered his participation. If however, Taxpayer filed the amended return before August 15th, the amended return would be considered a "superseding return" that is treated as the original return. Because this superseding return was filed with the required disclosure before the due date (as extended), taxpayer is not liable for the § 6707A penalty.

D. Application of Section 6707A—late filed returns

Notice 2005-11 provides that under §6707A, the penalty applies to each failure to provide a disclosure statement that is required to be attached to a return, including an amended return, filed after October 22, 2004 (with a copy sent to OTSA, if required), regardless of whether the original return was due on or before October 22, 2004.

The §6707A penalty will not be imposed until a taxpayer files a return and fails to provide the required disclosure statement. In other words, the §6707A penalty will not be imposed where a taxpayer has not yet filed a return—even if the due date for that return has already passed. Thus, the §6707A penalty will not be imposed where a taxpayer has failed to timely file a return (or required disclosure statement)) but subsequently files a late return with the required disclosure statement.

E. Statute of Limitations

1. When Disclosure is Required*:* Under the current version of the IRC §6011 regulations, disclosure (on Form 8886, *Reportable Transaction Disclosure Statement*) of a reportable transaction is not always to be made with the taxpayer's return.

2. Disclosure Required With Return

   a. General Period of Limitations

      When the Form 8886 is required to be filed with a return, the assessment of the IRC § 6707A penalty for a failure to timely and/or properly disclose a reportable transaction generally must be made within three years of the date of filing the underlying return pursuant to IRC §6501, *Limitations on Assessment and Collection*.

      Note that if the penalty is developed along with the determination of a deficiency with respect to the reportable transaction and a statutory notice of deficiency is issued, the penalty still needs to be assessed within the three-year period (unless an exception applies). The time to assess a deficiency is suspended during the 90-day period to file a petition, the time the case is before the Tax Court and an additional 60 days after the court's decision is final, however, these rules do not apply to the time to assess the penalty because the penalty is not part of the deficiency or subject to the deficiency procedures.

b. Exception for Listed Transactions

If the transaction giving rise to the disclosure requirement is a listed transaction, then additional time to assess may be available under IRC §6501(c)(10). First follow the instructions in *General Procedure Applicable to All Reportable Transactions* in the following section.

For listed transactions only, IRC §6501(c)(10) provides additional time to make an assessment of the penalty if the disclosure is not made with the return. IRC §6501(c)(10) provides that the period to assess tax with respect to a listed transaction that the taxpayer fails to disclose in accordance with IRC § 6011 shall not expire before one year after the earlier of (i) the date the taxpayer provides the information required under IRC §6011, or (ii) the date that a material advisor meets the requirements of IRC §6112. Consult with Counsel to determine the applicability of this provision.

Note that the ability to rely on IRC §6501(c)(10) should be the same for both (1) the IRC §6707A penalty and (2) any tax imposed with respect to the listed transaction that will appear in a notice of deficiency. In other words, if IRC §6501(c)(10) extends the period of limitations for a §6707A penalty associated with a listed transaction, it will also extend the period of limitations on the tax liability associated with the listed transaction.

c. General Procedures Applicable to all ReportableTransactions

The procedures for handling period of limitations are set for Section III.C.2 in the *Processing Guidelines* attachment issued simultaneously with this *Technical Guidance.*

3. Disclosure Independent of Return

Treas. Reg. §1.6011-4(e)(2)(i) requires taxpayers to file a disclosure with OTSA within 90 days of the date that a previously unlisted transaction, is listed by the Service if the taxpayer participated in the transaction and reported tax benefits from it on a return. Thus, in this situation, regulations require the disclosure to be filed without a return. Because the return on which the taxpayer took the tax benefits of the transaction was already filed and at the time of filing the return there was no requirement to make the disclosure (unless the transaction could have been considered a reportable transaction), there does not seem to be any basis to associate the three-year period for assessing tax on a return with the time to assess the penalty for failing to file a stand-alone statement. Nonetheless, if the statute of limitations on assessing the tax on this return is still open at the time of the failure to disclose, IRC § 6501(c)(10) may provide additional time to assess any tax imposed related to the listed transaction. Thus, the time to assess

the penalty for failure to disclose the listed transaction would not end before the time the Service has to assess the tax.

In this situation the best practice is for the agent to seek to obtain the taxpayer's consent to extend the statute of limitations if the expiration of the normal three-year period is imminent. The agent should follow the instructions in III.C.2.c.1 through 7 in the *Processing Guidelines*.

III. SECTION 6011 DISCLOSURE REQUIREMENTS

A. Overview of Disclosure Requirements

The application of the Section 6011 disclosure regulations requires that the taxpayer meet the definition of "participation" in a "reportable transaction" as those terms are defined in the relevant versions of the regulations, as well as other requirements of the applicable regulations described below. Whether a taxpayer was required to disclose under the Section 6011 regulations depends on what version of those regulations was in effect when the taxpayer entered into the transaction. The version of the regulations that applies to a transaction at the time the transaction was entered into by the taxpayer will remain applicable to the taxpayer, even if the regulations subsequently were modified. When the Section 6011 regulations do not impose a disclosure requirement, the Section 6707A penalty cannot apply. **Therefore, as explained more fully below, even if a taxpayer files a tax return after October 22, 2004, reflecting participation in a listed or non-listed reportable transaction and fails to file a Form 8886, he or she may not be subject to the Section 6707A penalty; further analysis is required before imposing the 6707A penalty.**

1. *Returns filed **on or before** February 28, 2000:* The disclosure regulations do not apply to any tax returns filed on or before February 28, 2000. See TD 8877 for more details.

2. *Returns filed **after** February 28, 2000 and transactions entered into **before** January 1, 2001 ("Old rule"):* The disclosure regulations initially applied to Federal **corporate** income tax returns filed after February 28, 2000. A listed transaction is not treated as a reportable transaction if it has affected the taxpayer's Federal income tax liability as reported on any tax return filed on or before February 28, 2000. A transaction may be an "other reportable transaction" only if it is entered into after February 28, 2000.

If a taxpayer entered into the transaction before 2001, it could be subject to the disclosure regulations *only* if it: (1) was a corporation and (2) the taxpayer reasonably estimated that the transaction would reduce the taxpayer's Federal income tax liability by more than $1 million in any single taxable year or by a total of more than $2 million for any combination of taxable years (the projected tax effect test – Section 1.6011-4T(b)(4)). See TD 8877, TD 8896, and TD 8961 for more details.

1. *Transactions entered into **on or after** January 1, 2001 and **before** January 1, 2003: Taxpayer filed its return reporting the transaction **on or before** June 14, 2002*: If the taxpayer entered into the transaction on or after January 1, 2001 *and* filed its tax return reporting the transaction (i.e. reflecting the tax impact of *that* transaction) on or before June 14, 2002, the taxpayer was subject to the "old rule." In other words, the taxpayer was subject to the disclosure rules only if it was a corporation and the transaction reduced the taxpayer's Federal income tax liability by the threshold amounts listed under the "old rule" above. See TD 9000; and TD 8877, TD 8896, and TD 8961 for more details.

2. *Taxpayer filed its return reporting the transaction **after** June 14, 2002:* If the taxpayer entered into the transaction on or after January 1, 2001 *and* did not file its tax return reporting the transaction (i.e. reflecting the tax impact of that transaction) on or before June 14, 2002, the taxpayer was subject to the disclosure rules if it was a corporation, individual, trust, partnership, or S corporation. However, taxpayers other than corporations were only subject to the disclosure rules with respect to listed transactions. Listed transactions no longer had to meet the projected tax effect test. See TD 9000 for more details.

3. *Transactions entered into **on or after** January 1, 2003:* All taxpayers who are required to file a tax return are subject to the disclosure rules with respect to all reportable transactions, including listed transactions. See TD 9017, TD 9046, TD 9108, TD 9295, and TD 9350 for more details.

B. How Does A Taxpayer Disclose a Reportable Transaction?

Since March 2003, the Form 8886, *Reportable Transaction Disclosure Statement*, has been available to taxpayers for use as the disclosure statement required under §6011 and the regulations. Under the regulations issued prior to TD 9017, taxpayers did not have to use the Form 8886, but they had to disclose the information required under the regulations on a statement attached to their return. Under the current version of Treas. Reg. §1.6011-4(e), the Form 8886 must be attached to the taxpayer's tax return (or amended return) for each taxable year for which a taxpayer participates in a reportable transaction. In addition, when the taxpayer files its first Form 8886, a duplicate form must be sent to the Office of Tax Shelter Analysis (OTSA). Generally, a taxpayer should first file a Form 8886 beginning with the first year that it has participated in the reportable transaction. Thus, the requirement to file a duplicate Form 8886 should arise during the first year of participation in the reportable transaction. If, however, the taxpayer fails to file any Form 8886 in its first year of participation, the requirement to send a duplicate Form 8886 to OTSA will arise whenever the taxpayer first submits a Form 8886—regardless of how many years it has been engaged in the reportable transaction at issue. A failure to submit either filing is a failure to satisfy the disclosure requirements and results in liability under

§6707A. There are special rules relating to the filing of a disclosure statement for transactions that become listed transactions or transactions of interest after the taxpayer has filed a return reflecting the taxpayer's participation in the transaction. In these situations, depending on which version of the regulation applies to the transaction, taxpayers may have to disclose with their next filed return and send a copy to OTSA or, under TD 9350, taxpayers may have to disclose to OTSA within 90 days after the date the transaction became a listed transaction or transaction of interest. If a taxpayer has entered into more than one reportable transaction, the taxpayer is required to meet the disclosure requirements with respect to each transaction; however, only one disclosure is made for substantially similar transactions.

C. Identifying Reportable Transactions

1. What is a Reportable Transaction?

   Treas. Reg. 1.6011-4(b) currently lists 5 types of reportable transactions. They are: (1) "listed transactions," (2) confidential transactions, (3) transactions with contractual protection, (4) loss transactions, and (5) transactions of interest. The definition of reportable transaction will vary greatly depending on which version of the regulations applies to the transaction, so it is imperative to look to the actual language of the regulations. For example, transactions with a significant book-tax difference were formerly a type of reportable transaction. Additionally, over time there have been exceptions to the reporting requirements contained in the regulations, such as the exception provided in Notice 2006-16. A list of transactions that taxpayers are not required to disclose is available on the OTSA Website ('lmsb.irs.gov/hq/pftg/otsa/exceptions-angel list.asp").

2. Did the taxpayer participate in a Reportable Transaction?

   When assessing whether §6707A applies, examiners must evaluate whether the taxpayer participated in a reportable transaction within the meaning of Treas. Reg. §1.6011-4(c). Again, this determination will vary based upon which version of the regulations is in effect for the transaction, so the actual language of the regulations must be consulted. Since TD 9046, the regulations have defined participation in slightly different ways depending upon the type of transaction involved. Examiners may encounter additional difficulties with the term "tax benefit" within the meaning of the regulation. For example, Treas. Reg. §1.6011-4(c)(3)(i)(B) states that a taxpayer participates in a confidential transaction if its tax return reflects a tax benefit from that transaction. It may be possible that certain transactions create tax benefits that occur in some years but not in others and would therefore require only intermittent disclosure. You should consult the regulations and Counsel if you believe that a provision may apply to the transaction you are reviewing.

3. Resources for Identifying Undisclosed Reportable Transactions

In working to identify undisclosed reportable transactions, it is essential that examiners become familiar with the various characteristics that are peculiar to tax shelters. They are outlined in the “Corporate Tax Shelter Check Sheet” which was developed to assist examiners in identifying corporate tax shelters and can be accessed on the OTSA Website under the link entitled “Tax Shelter Checksheet.”

Another resource to identify the characteristics of tax shelter transactions is an article by Michael Graetz, Professor of Law, Yale Law School, that is available at the OTSA Website, via the link entitled “Working a Tax Shelter Case.”

Information on a number of emerging issues with which examiners should become familiar is available on the OTSA Website using the link entitled “Emerging Issues.”

IV. MISCELLANEOUS CONSIDERATIONS

A. Tax Accrual Workpapers

Examiners must determine whether to request the taxpayer’s tax accrual work papers. If the preliminary review of a return reveals the presence of a Form 8886 or other indications of a listed transaction(s), the examiner should consider immediately requesting the tax accrual workpapers.

For guidance in making this determination, examiners should refer to Announcement 2002-63, which sets forth the Service’s revised policy regarding when it will request, and, if necessary, issue a summons for tax accrual and other financial audit workpapers. Examiners also should review IRM 4.20.10, Requesting Audit, Tax Accrual, or Tax Reconciliation Work Papers, and Frequently Asked Questions (FAQs). For more information, see the OTSA Website.